

NORTH CAROLINA  
CLEVELAND COUNTY

GARDNER-WEBB UNIVERSITY,  
Plaintiff,

v.

PRO FORM SPORTS. LLC; and  
GARY WILSON;  
Defendants.

IN THE GENERAL COURT OF JUSTICE  
SUPERIOR COURT DIVISION

FILE: 20 CVS 345

COMPLAINT

FILED  
CLEVELAND COUNTY  
2000 FEB 28 P 1:37  
100-770

NOW COMES Plaintiff, by and through Delton W. Barnes of King Law Offices, PLLC, complaining of Defendants, alleges and says the following:

**PARTIES, CAPACITY, JURISDICTION, AND VENUE**

1. Plaintiff is a non-profit, institution of higher education formed under the laws of North Carolina. Plaintiff is located in Boiling Springs, North Carolina, which is within Cleveland County.
2. Defendant Pro Form Sports, LLC is a limited liability company formed under the laws of Florida, principally located in Leon County, Florida, and conducts business in the State of North Carolina.
3. Upon information and belief, Defendant Gary Wilson is a citizen and resident of Leon County, Florida.
4. Upon information and belief, the Defendants are not incompetents, minors, nor members of the armed services.
5. Defendant Gary Wilson is the Chief Executive Officer of Pro Form Sports, LLC.
6. This is an action for Breach of Contract, Money Owed and to Pierce the Corporate Veil.
7. This Court has personal jurisdiction over Defendant Pro Form Sports, LLC in the following particulars:

- a. Pro Form Sports, LLC, conducts substantial activity in North Carolina having previously done at least one major project on the athletic facilities at Gardner-Webb University, N.C.G.S. § 1-75.4(1)(d);
  - b. This cause of action arises out of promises made between Plaintiff and Pro Form Sports, LLC, to be performed in North Carolina. N.C.G.S. § 1-75.4(5).
  - c. This cause of action arises out of promises made to and by Pro Form Sports, LLC, which affect improvements of real property owned by Plaintiff. N.C.G.S. § 1-75.4(6).
  - d. Pro Form Sports, LLC, consented to and waived personal jurisdiction in North Carolina in the written agreement with Plaintiff.
8. This Court has personal jurisdiction over Defendant Gary Wilson in the following particulars:
- a. Gary Wilson conducts substantial activity in North Carolina by virtue of his position with Defendant Pro Form Sports, LLC, having previously done at least one major project on the athletic facilities at Gardner-Webb University, N.C.G.S. § 1-75.4(1)(d);
  - b. This cause of action arises out of promises made between Plaintiff and Gary Wilson, to be performed in North Carolina. N.C.G.S. § 1-75.4(5).
  - c. This cause of action arises out of promises made to and by Gary Wilson, which affect improvements of real property owned by Plaintiff. N.C.G.S. § 1-75.4(6).
  - d. Gary Wilson, consented to and waived personal jurisdiction in North Carolina in the written agreement with Plaintiff.
9. Venue is proper in Cleveland County, North Carolina for the reasons stated above and pursuant to N.C.G.S. § 1-80 and § 1-82

### **FACTUAL BASIS FOR CLAIMS**

10. On August 9, 2019, Plaintiff and Defendants entered into an agreement in which Defendants agreed to reimburse Plaintiff for the cost of labor and materials necessary to complete the artificial turf project for Plaintiff's baseball stadium.
11. In consideration for the Defendants' reimbursing of the project, Defendant Gary Wilson is to receive a lifetime paid membership to the University's booster club, the Bulldog Club.
12. In Consideration for the Defendants' reimbursing of the project, Defendant Pro Form Sports is to receive a sponsorship signage with the University's athletic facilities for five-years.
13. Defendants jointly and severally agreed to reimburse Plaintiff for the full amount of the actual cost to complete the project.
14. Defendants agreed to begin reimbursing Plaintiff in 12 equal consecutive monthly installments beginning 30 days after substantial completion of the project, with the entire amount to be paid in full by August 31, 2020.
15. This agreement was memorialized into a written contract, attached hereto as Exhibit "A" and incorporated herein, which was signed by Defendants.
16. Plaintiff has performed its duties under the agreement.
17. In or around October 2019, the project at the baseball field was substantially completed. The total cost of the completed project to Plaintiff was \$523,482.98.
18. On November 21, 2019, Plaintiff began invoicing Defendant \$52,348.30 per month in accordance with the terms of the agreement.
19. As of the date of this Complaint, Defendants have been invoiced the amount of \$209,393.20.
20. On February 5, 2020, Plaintiff made a demand on Defendants to pay the amount then due and owing of \$157,044.90.

21. To date, no payments have been made by Defendants.
22. Based upon Defendant Pro Form Sports, LLC's actions, Plaintiff fears that it is an inadequately funded company, does not follow corporate formalities, is controlled by individuals and entities outside of its corporate structure and lack corporate independence. Furthermore, Plaintiff fears that the third-party control over Defendant Pro Form Sports, LLC was used in contravention of Plaintiff's legal rights and proximately caused the damages alleged herein. Therefore, Plaintiff is placing Defendants on notice and reserves its claim to pierce the corporate veil.

**FIRST CLAIM FOR RELIEF**  
**(Breach of Contract)**

23. The Parties negotiated and achieved mutual assent to the terms outlined in the attached contract. There was an offer, acceptance, and good and valuable consideration.
24. Defendants materially breached the contract by failing to satisfy the invoices rightfully billed upon substantial completion of the project.
25. Plaintiff is able and willing to perform on the contract.
26. Defendants have anticipatorily breached the contract and the full amount is due and owing.
27. Plaintiff is entitled to recover the cost of the project totaling **\$523,482.98**.

**SECOND CLAIM FOR RELIEF**  
**(Money Owed)**

28. Plaintiff is entitled to recover **\$523,482.98** from Defendants for money owed to Plaintiff.
29. Plaintiff has incurred costs and expenses promised to be reimbursed by Defendants in the amount of **\$523,482.98** for which the Defendants have not paid. This created a debt to Plaintiff that is due and owing.

**THIRD CLAIM FOR RELIEF**  
**(Piercing the Corporate Veil)**

30. Plaintiff is putting the Defendants on notice that it may be entitled to pierce the corporate veil of Defendant Pro Form Sports and potentially unknown corporations and individuals to recover monies owed by virtue of the claims within this complaint.

WHEREFORE, Plaintiffs, pray the Court for relief as follows:

1. That the Plaintiff receive a judgment against Defendants jointly and severally in the amount of **\$523,482.98** plus interest from the due date of the invoices.
2. That costs, including attorney's fees, be taxed against Defendants pursuant to N.C.G.S. § 6-20.
3. That Plaintiff pierce the corporate veil so as to recover damages as justice requires.
4. That Defendants be taxed with the costs of this action.
5. That Plaintiffs have and recover such other and further relief as the Court may deem just and proper.

Signed this 25<sup>th</sup> day of February, 2020.

KING LAW OFFICES, PLLC



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Delton W. Barnes  
*Attorney for Plaintiff*  
NC Bar Number: 53379

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NORTH CAROLINA  
CLEVELAND COUNTY

GARDNER-WEBB UNIVERSITY,  
Plaintiff,

v.

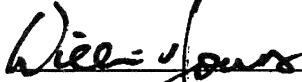
PRO FORM SPORTS. LLC; and  
GARY WILSON;  
Defendants.

IN THE GENERAL COURT OF JUSTICE  
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**VERIFICATION**

STATE OF NORTH CAROLINA  
COUNTY OF CLEVELAND

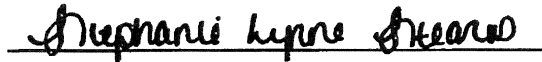
Dr. William Downs, being first duly sworn, deposes and says that he is an authorized agent of the Plaintiff in the above-captioned matter; that he has read the foregoing Complaint and knows the contents thereof and that the same are true to his own knowledge except as to those matters stated on information and belief, and as to those matters he believes them to be true.



Dr. William Downs, President  
Gardner-Webb University

SWORN TO AND SUBSCRIBED BEFORE ME

this the 24 day of February, 2020



Notary Public

My Commission Expires: November 21, 2024

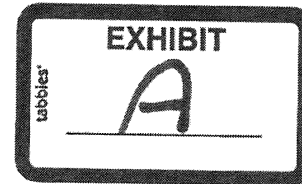




GARDNER-WEBB  
UNIVERSITY

August 9, 2019

Gary Wilson  
Mary Roberts  
Pro Form Sports  
215 S. Monroe Street, Ste. 320  
Tallahassee, FL 32301



Gary and Mary,

I'm writing to thank you for your continued support to the University and to outline the arrangements that we understand you and Mary Roberts, Pro Form Sports President, have made to facilitate completion of the project at the University's baseball field. Please take a few moments to review the terms of our agreement with you and Pro Form Sports regarding the generous gift to the University to which you and Pro Form have committed. If the terms set out are acceptable and consistent with your understanding of the commitment, please acknowledge with your signature.

1. You, personally and jointly with Pro Form Sports, have agreed to reimburse the University for the cost of labor and materials necessary to complete the artificial turf project for Gardner-Webb University which is currently under construction at the University's baseball stadium. Further, Pro Form Sports has agreed to provide, at its own cost and at no expense to the University, any assistance and expertise needed to finish the project in a timely, professional, and warrantable manner and to provide a warranty covering the product and its installation. In recognition of your gift, the University agrees to offer you (Gary Wilson) a lifetime paid membership in the GWU Bulldog Club. Further, the University will provide Pro Form Sports with sponsorship signage (at the location and discretion of the VP for Athletics) within our athletic facilities for a period of 5 years. Pro Form Sports and the University have agreed that for legal purposes this agreement shall be governed by North Carolina law without regard to its conflicts of law principles.
2. As phase one of this work has already been completed, Pro Form Sports will provide to GWU a list of all vendors, material suppliers and contractors who have contributed to the project thus far. This list shall include value of work completed, invoiced amounts, paid amounts, and outstanding balances due for work completed as of this date. Pro Form agrees to pay any balances due for this portion of the project and to provide lien releases from all suppliers and vendors from this portion of the project.
3. GWU agrees to complete the work remaining on the project as General Contractor and Pro Form Sports agrees to provide GWU with the timely assistance and expertise needed to complete the work in a professional and warrantable manner. Pro Form Sports will provide to GWU a full warranty on the finished product/project on the same warranty terms as normally provided by Pro Form Sports to its purchasers of the same or similar products and installation. The terms of the warranty shall be provided at execution of this agreement.

4. GWU agrees to advance the funds to complete the project, estimated to be in the amount not to exceed \$490,000. An exhibit of estimated expenses is attached. Gary Wilson and Pro Form Sports, jointly and severally, agree to repay GWU the full amount of the actual cost to complete the project, currently estimated at \$490,000, in 12 equal consecutive monthly installments beginning 30 days after substantial completion of the project with the entire amount to be paid in full by August 31, 2020. It is understood by the parties that the total amount to be reimbursed to GWU shall not exceed the total cost necessary for GWU to complete the project and that GWU will make any necessary payment adjustments at the conclusion of the project and will provide copies of any invoices and payments to you and Pro Form Sports upon request. You and Pro Form Sports acknowledge and agree that the cost to the University to complete this project is not an expense for which the University has budgeted and that this project would not, and could not, have been undertaken without the support of this generous gift.

Again, I would like to thank both you and your company for your ongoing generous support of Gardner-Webb University and we look forward to the successful completion of the project made possible by your commitment.

Sincerely,



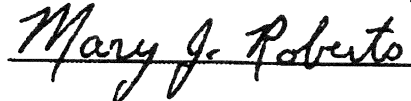
Chuck Burch  
Vice President for Athletics  
Gardner-Webb University

This gift agreement is acknowledged and agreed to by:



Gary Wilson,  
Personally and on behalf of Pro Form Sports

Date: 8/9/19



Mary Roberts,  
President, Pro Form Sports

Date: 8/9/19



**GWU Estimate to Complete**

Turf - FL416-42 Field Green	\$249,676.17
Turf - FL416-42 Red Clay	\$36,347.33
Seam Tape	\$2,525.60
Adhesive	\$25,200.00
Freight on Adhesive / Seam Tape	\$3,000.00
Freight on Turf	\$8,000.00
Sand	\$29,459.03
Rubber Infill	\$26,358.08
Turf Installation Labor	\$74,523.75
Dumpster Rental	\$1,000.00
Forklift	\$500.00
Soil removal, restoration and misc expenses	\$25,000.00
Contingency	\$8,410.04

**Estimate to Complete: \$490,000.00**